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IN THE SUPREME COURT OF PENNSYLVANIA,
MIDDLE DISTRICT

**MAY TERM, 1940**

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# No. 33

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EQUITABLE LOAN SOCIETY, INC., ET AL.,
*Appellants,*

*vs.*

JOHN C. BELL, JR., SECRETARY OF BANKING OF THE COMMONWEALTH OF PENNSYLVANIA; ROBERT W. DOTY, DEPUTY SECRETARY OF BANKING OF THE COMMONWEALTH OF PENNSYLVANIA; AND O. B. LIPPMAN, CHIEF OF CREDIT UNIONS AND SMALL LOAN COMPANIES OF THE DEPARTMENT OF BANKING OF THE COMMONWEALTH OF PENNSYLVANIA,
*Appellees.*

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APPEAL FROM DECREE OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

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## JURISDICTIONAL STATEMENT FILED PURSUANT TO RULE 12 OF THE SUPREME COURT OF THE UNITED STATES.

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*To the Honorable, the Chief Justice of the Supreme Court of Pennsylvania:*

The appellants in the above entitled case, and petitioners for the allowance of an appeal to the Supreme Court of the United States from the final decree of the Supreme Court

of Pennsylvania in this case, herewith respectfully present the separate typewritten statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of Pennsylvania, said statement being filed pursuant to Rule 12 of the Supreme Court of the United States.

1. Section 237 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, C. 229, 43 Stat. 937, 28 U. S. C. A. Section 344 (a), provides as follows:

> "• • • A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

2. The statute of the Commonwealth of Pennsylvania, the validity of which is involved in this cause, is the Pawnbrokers License Act of April 6, 1937, P. L. 200. A copy of said Act is attached hereto, made part hereof and marked Exhibit "A".

The sections of said Act, the validity of which is involved by this appeal, are Section 8 and Section 12.

Section 8 purports to empower the Secretary of Banking to refuse any application for a pawnbroker's license with-

out notice, hearing, or statutory right of appeal, but solely upon his own decision:

> "* * * that the financial responsibility, experience, character, and general fitness of the applicant or applicants is not such as to command the confidence of the community and to warrant the conclusion that the business will be operated honestly, fairly, and within the laws of this Commonwealth, or if he is not satisfied that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted: * * *"

Section 12 purports to limit the charges by pawnbrokers for interest and for storage, insurance, investigation and other services. It provides for a maximum interest charge of six per cent (6%) per year on any loan. In addition, it permits pawnbrokers to charge fees for storage, insurance, investigation, and other services in the following maximum amounts: on loans secured by jewelry, watches, gems, gold or sterling ware, one per cent (1%) per month on loans exceeding $50.00, and on loans of $50.00 or less, not more than two per cent (2%) per month for the first three months and one and one-quarter per cent (1¼%) per month thereafter, nor less than one per cent (1%) per month. The Secretary of Banking is directed to fix the fees within the limitations prescribed and thereafter to increase or decrease such fees within such limitations. On loans for which other personal property has been pledged, Section 12 fixes the maximum rate of charge for storage, insurance, investigation and other services at two and one-half per cent (2½%) per month.

3. The judgment sought to be reviewed was entered by the Supreme Court of Pennsylvania on June 25, 1940, and a petition for reargument was refused on October 1, 1940.

The application for appeal to the Supreme Court of the United States was presented on October 10, 1940.

4. Petitioners, all of whom are pawnbrokers who were licensed under the laws of the Commonwealth of Pennsylvania and the respective municipalities in which they were located, in effect prior to the effective date of the aforesaid Act, filed their bill of complaint in the Court of Common Pleas of Dauphin County, Pennsylvania, against the defendants, the officers of the Commonwealth of Pennsylvania charged with the administration and enforcement of the Pawnbrokers License Act. The bill prayed for a preliminary injunction enjoining the defendants and their successors in office from taking any action affecting the petitioners under color of the provisions of the Pawnbrokers License Act, and from interfering in any way with the conduct of petitioners in their pawnbroking business and from requiring or attempting to require them to take out licenses or take out bonds under the said Pawnbrokers License Act as a condition precedent to their continuation in business and from prosecuting or attempting to prosecute the petitioners for failure to comply with the provisions of the said Pawnbrokers License Act.

Petitioners' bill and prayer for injunction were wholly based on the alleged unconstitutionality of the Pawnbrokers License Act under both the Constitution of Pennsylvania and the Constitution of the United States.

5. The defendants in their answer filed denied that the Act was invalid in any respect under the Constitution of Pennsylvania or under the Constitution of the United States. The case was heard on final hearing before a chancellor and evidence was presented by petitioners to show that the rates fixed and permitted by the Act were confiscatory, in that they did not permit petitioners to earn a reasonable return upon their capital invested.

6. Thereafter, requests for findings of fact and conclusions of law were filed by petitioners and the defendants, with supporting briefs. Petitioners specifically requested the chancellor to find as conclusions of law, *inter alia*, that Sections 8 and 12 of the Pawnbrokers License Act violate the due process clause of the Fourteeenth Amendment to the Constitution of the United States. The requests appear verbatim in the assignments of error filed in the Supreme Court of Pennsylvania and quoted in paragraph 7 below. The chancellor entered an adjudication wherein he found *inter alia* that the Act was not in violation of the Constitution of the United States in the respects recited, and entered a decree *nisi* dismissing the bill. Petitioners filed exceptions to the findings of the chancellor on the questions presented under the Constitution of the United States, which exceptions appear verbatim in the assignments of error filed in the Supreme Court of Pennsylvania, quoted in paragraph 7 below. The exceptions were dismissed and a final decree was entered dismissing the bill.

7. Petitioners appealed to the Supreme Court of Pennsylvania, and in that Court filed *inter alia*, the following assignments of error, which appear at page 19, et seq., of the appellants' brief, filed with the Supreme Court of Pennsylvania:

> "14. The Court below erred in dismissing the appellants' twenty-eighth exception, which was as follows (R. 705a):
>
> " '28. Plaintiffs except to the Court's failure to find as requested in Plaintiffs' Requests for Conclusions of Law, No. 7, as follows:
>
> " ' "7. Sections 3, 4, 5, 6, 7 and 8 of the 1937 Act violate the Fourteenth Amendment of the Constitution of the United States and Section 1 of the Declaration of Rights of the Constitution of Pennsylvania,

because they grant to the Secretary of Banking unrestricted power to refuse licenses to pawnbrokers now validly licensed,—without notice, hearing, findings of fact, or right of appeal.'' '

• • • • • • •

''15. The Court below erred in dismissing the appellants' twenty-ninth exception, which was as follows (R. 705a):

'' '29. Plaintiffs except to the Court's failure to find as requested in Plaintiffs' Requests for Conclusions of Law, No. 8, as follows:

'' ' ''8. Section 12 of the 1937 Act violates the due process clause of the Fourteenth Amendment of the Constitution of the United States, and Section 1 of the Declaration of Rights of the Constitution of Pennsylvania, in that it fixes, and delegates to the Secretary of Banking authority to fix, maximum rates of charge for investigation, storage and insurance on pawnbrokers' loans which, in conjunction with the maximum rate of interest fixed by the act, make it impossible for the plaintiffs to earn a reasonable return on the capital invested by them in the pawnbroking business, and which are, therefore, unreasonable and confiscatory.'' '

• • • • • • •

''20. The Court below erred in dismissing the appellants' thirty-first exception, which was as follows (R. 706a):

'' '31. Plaintiffs except to the Court's failure to find as requested in Plaintiffs' Requests for Conclusions of Law, No. 10, as follows:

'' ' ''10. Sections 12, 19 and 23 of the 1937 Act violate the due process clause of the Fourteenth Amendment of the Constitution of the United States, and Section 1 of the Declaration of Rights of the Pennsylvania Constitution, in that they impose burdensome and unreason-

able restrictions on the pawnbroking business, not related to any valid purpose disclosed by the act.'' ''

8. Pursuant to the Rules of the Supreme Court of Pennsylvania, requiring parties to state the questions involved, petitioners in their brief filed in that Court (page 1) stated the Federal questions involved as follows:

"Under the Constitutions of Pennsylvania and of the United States:

"3. May the Legislature give to an executive officer the power, without notice, hearing or right of appeal, to refuse licenses to pawnbrokers who, under municipal licenses, have valuable established businesses?

"The court below answered, 'Yes'.

"4. May the Legislature fix maximum rates for storage, insurance, investigation and other services, under which pawnbrokers cannot earn a reasonable return on their investments?

"The court below answered, 'Yes'.

"5. May a chancellor fail to consider proof that such rates are confiscatory?

"Inferentially, the court below answered, 'Yes'.

* * * * * * *

"7. May the Legislature, without prescribing any definite standards, or disclosing any legislative policy, delegate to the Secretary of Banking authority (a) to determine which existing pawnbrokers shall continue in business, (b) to fix the maximum rates for storage, insurance, investigation and other services on certain loans, within certain limits, without notice, hearing or right of appeal, * * *

"The court below answered, 'Yes'."

The above stated Federal questions were argued in the briefs filed in the Supreme Court of Pennsylvania (appellants' brief, pages 99 to 162, inclusive; appellees' brief,

pages 25-28, 30-41, inclusive), and at the oral argument before that Court.

9. The Supreme Court of Pennsylvania on June 25, 1940, entered the judgment sought to be reviewed, affirming the decree of the court below dismissing the bill of complaint. A majority of the Supreme Court of Pennsylvania held constitutional the licensing and rate-fixing provisions of the Pawnbrokers License Act, the invalidity of which was asserted by petitioners as above recited. Copies of all opinions, four in number, filed in the Supreme Court of Pennsylvania in rendering the judgment sought to be reviewed, are attached hereto, marked Exhibits "B" to "E", inclusive.

10. The questions involved are substantial. In support of this statement petitioners aver the following.

(a) The fundamental proposition on which the opinion of the majority of the Supreme Court of Pennsylvania was based, regarding the rate-fixing provisions of the Act, was as follows: that proof of confiscation was immaterial for the reason that the Commonwealth, in the exercise of the police power, might prohibit the business of pawnbroking entirely. Three of the seven justices of the Supreme Court of Pennsylvania repudiated this doctrine, holding that the Commonwealth is without power to prohibit the pawnbroking business, but is restricted in its power to the imposition of reasonable regulations. (Dissenting opinion of Mr. Justice Stern, concurred in as to this point by Mr. Justice Patterson, and opinion of Mr. Chief Justice Schaffer, Exhibits "E" and "D".) In this connection Mr. Justice Stern in his dissenting opinion stated (Exhibit "E", pages 2-3):

> "• • • It seems to me that it would be a distinct deprivation of a right of property and of contract, and therefore a violation of the Constitution of the Commonwealth as well as of the Fourteenth Amendment of

> the Federal Constitution, for the State to prohibit entirely the carrying on of a business which, in itself, is not only innocuous but in almost every age and clime has apparently proved to be essential to the economic life of those financially less fortunate."

In support of his position, Mr. Justice Stern cited and quoted from the opinion of the Supreme Court of the United States in *Asakura* v. *Seattle*, 265 U. S. 332, 343 (1924). Petitioners contend that this position of the minority is in accord with the further controlling decisions of the Supreme Court of the United States in *Weaver* v. *Palmer Brothers Company*, 270 U. S. 402 (1926), and *Adams* v. *Tanner*, 244 U. S. 590 (1917).

(b) Petitioners further contend (and presented this view in written and oral argument to the Supreme Court of Pennsylvania; appellants' brief, pages 146-150) that regardless of whether the State Legislature might by appropriate legislation, based on appropriate legislative findings, prohibit the business of pawnbroking, the Legislature may not in legislation which specifically sanctions and provides for the licensing of pawnbroking businesses impose thereon a schedule of rates which is unreasonable and confiscatory. Petitioners assert that this conclusion is in accord with the controlling decisions of the Supreme Court of the United States, including *Terral* v. *Burke Construction Company*, 257 U. S. 529 (1922), and *Frost & Frost Trucking Co.* v. *Railroad Commission of California*, 271 U. S. 583 (1926).

(c) In his dissenting opinion, Mr. Justice Stern concluded that the provisions for the refusal of licenses contained in Section 8 of the Act are "perhaps even more violative of constitutional principles" under "the precedents in the Supreme Court of the United States". Exhibit "E", page 6. Petitioners assert that this conclusion is supported by the controlling decisions of the Supreme Court of the United

States, including *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935); *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935); and *Southern Railroad Co.* v. *Virginia*, 290 U. S. 190 (1933).

11. Attention is respectfully called to the fact that for the writ of error provided for by Section 237 (a) of the Judicial Code, as above quoted, "appeal" has now been substituted. Section 237 (a), defining the jurisdiction of the Supreme Court of the United States, is unaffected by this change of nomenclature. Act of January 31, 1928, c. 14, 45 Stat. 54, as amended by the Act of April 26, 1928, c. 440, 45 Stat. 466, 28 U. S. C. A. Sections 861a, 861b.

12. Pursuant to the provisions of Rule 12 of the Supreme Court of the United States, petitioners cite the following cases as substantiating the jurisdiction of the Supreme Court of the United States of this case upon appeal: *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U. S. 282 (1921); *Northern Pacific Railway Company et al.* v. *The Department of Public Works of the State of Washington et al.*, 268 U. S. 39 (1925); *Palmetto Fire Insurance Company* v. *Conn.*, 272 U. S. 295 (1926).

Respectfully submitted,

W. A. SCHNADER,
*Attorney for Petitioners.*

# EXHIBIT "A".

## No. 51

## AN ACT

Licensing and regulating the business of pawnbrokers; providing for the issuance of licenses by the Secretary of Banking; authorizing the Secretary of Banking to make examinations and issue regulations; limiting the interest and charges on loans; and prescribing penalties for the violation of this act.

Title.

"Pawnbrokers License Act."

Section 1. Short Title.—Be it enacted, &c., That this act shall be known, and may be cited, as the "Pawnbrokers License Act."

Definitions.

Section 2. Definitions.—The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise.

"Pawnbroker" includes any person, who—(1) engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; or (2) purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price; or (3) does business as a storage warehouseman and lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

"Pledge" means an article or articles deposited with a pawnbroker as security for a loan in the course of his business as defined in the preceding paragraph.

"Pledger" means the person who obtains a loan from a pawnbroker and delivers a pledge into the possession of a pawnbroker, unless such person discloses that he is or was acting for another in which case a "pledger" means the disclosed principal.

"Person" includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized.

"Pawnbroking" means the business of a pawnbroker as defined in this act.

"Pawn Ticket" means the card, book, receipt or other record furnished to the pledger at the time a loan is granted containing the terms of the contract for a loan.

"Applicant" means any individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized applying for a license under this act and/or any person appearing as owner, partner, officer, director, trustee or other official of a partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized, on such application for license under this act.

"Municipality" includes a city, town, borough or township.

License must be secured before engaging in pawnbroker's business.

Section 3. License Required.—No person, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized shall, on and after the effective date of this act, engage or continue to engage in business as a pawnbroker in this Commonwealth except as authorized by this act and without first obtaining a license from the Secretary of Banking.

Application for license.

Section 4. Application for License.—The application for such license shall be in writing, under oath and in the form prescribed by the Secretary of Banking and

Contents.

shall contain the name and address of the residence of the applicant, and if the applicant is a partnership, association, joint-stock company or common law trust of every member thereof, and if the applicant is a business corporation or nonprofit corporation of each officer and director thereof; also the county and municipality with street and number, if any, office building and room number, if any, where the business is to be conducted and such further information as the Secretary of Banking may require. The application shall be signed by the individual owner if the applicant is an individual, by all the partners if the applicant is a partnership, by two officers if the applicant is an association, joint-stock company or common law trust, and by the president and secretary if the applicant is a business corporation or a nonprofit corporation.

License bond.

Section 5. License Bond.—A bond in the penal sum of two thousand ($2,000.00) dollars shall accompany every application for license. The bond shall be executed by a surety company authorized by the laws of Pennsylvania to transact business within this Commonwealth. The Secretary of Banking may, in lieu of such surety company bond, accept a bond executed by the applicant for license if such bond is secured by the deposit with the Secretary of Banking of cashiers checks, treasurers checks or certificates of deposit of a banking institution or readily marketable securities approved by the Secretary of Banking. Such collateral, deposited in lieu of a surety company bond, shall be deposited for safekeeping by the Secretary of Banking in the Office of the

Renewal of bond.

State Treasurer. The bond shall be renewed and refiled annually not later than October first in each year. The bond shall be executed to the Commonwealth of Pennsylvania. The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against the pawnbroker as a licensee under this act. The condition of the bond shall be that the pawnbroker will comply with and abide by all the provisions of this act and all rules and regulations of

the Secretary of Banking lawfully issued under this act, and will pay to the Commonwealth, to the Secretary of Banking, or to any person or persons any and all moneys that may come due to the Commonwealth, to the Secretary of Banking, or to any person or persons from the said pawnbroker under and by virtue of the provisions of this act. A separate bond shall be required for each place of business conducted by a pawnbroker. If any person shall be aggrieved by the misconduct of a pawnbroker, and shall recover judgment against him therefor, such person may on any execution issued under such judgment maintain an action upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed, provided the Secretary of Banking assents thereto.

Separate bond for each place of business.

Section 6. License Fee.—Every application for license under this act shall be accompanied by an annual license fee of one hundred ($100.00) dollars. All licenses shall expire on October first annually. No abatement of the said license fee shall be made if the license is issued for less than one yar. Every license shall be renewed annually on the first day of October and an additional license fee of one hundred ($100.00) dollars shall be paid for the next ensuing license year.

License fee.

Expiration of license.

All license fees and fines received by the Secretary of Banking shall be deposited in the State Treasury to the credit of the Banking Department Fund for the use of the Secretary of Banking in administering this act.

Section 7. Issuance of License.—The Secretary of Banking, if he approves the application for license, shall issue to each pawnbroker a certificate showing the name of the pownbroker and the address of the place of business. Such license shall be posted in a conspicuous place in the office of the pawnbroker so that it shall be in full view of the public at all times. Such license may not be transferred or assigned. Whenever a pawnbroker shall change his place of business to another location within the same city, borough or township, he shall at once give written notice thereof to the Secretary of Banking and return the license certificate to the Secretary of Banking for amendment. The Secretary of Banking, if he approves the removal, shall endorse on the license in writing his record of the change of address and the date thereof, which shall be the authority for the operation of such business under such license at such new location. No change in the place of business of a pawnbroker to a location outside the original city, borough or township shall be permitted under the same license. Not more than one place of business may be operated under the same license.

Secretary of Banking to issue the license.

License must be posted.

Removal notice.

If a pawnbroker operates more than one place of business, additional licenses may be obtained by filing a

Licenses must be secured for each place of business.

separate application for each additional place of business and furnishing an additional bond for each additional place of business and paying the license fee provided in this act for each such place of business.

Secretary of Banking may reject any application.

Section 8. Powers of the Secretary of Banking.—The Secretary of Banking shall have the power to reject any application for license if he is satisfied that the financial responsibility, experience, character, and general fitness of the applicant or applicants is not such as to command the confidence of the community and to warrant the conclusion that the business will be operated honestly, fairly, and within the laws of this Commonwealth, or if he is not satisfied that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted: Provided, however, That no license may be issued to an applicant who has been convicted under this act for engaging in the business of pawnbroking in this Commonwealth, without having obtained a license under this act.

Proviso.

Secretary of Banking may reject any license.

The Secretary of Banking may, upon thirty (30) days' written notice to the pawnbroker, forwarded by registered mail to the place of business of such pawnbroker as shown in the application for license, stating the contemplated action and in general the grounds therefor, revoke any license if the pawnbroker shall violate any provision of this act, or if the pawnbroker shall violate any rule or regulation made by the Secretary of Banking under and within the authority of this act, or if a pawnbroker shall fail to comply with any demand, rule or regulation lawfully made by the Secretary of Banking under and within the authority of this act, or if the pawnbroker shall fail to pay the cost of examination by the Secretary of Banking or his authorized representative, or if the pawnbroker has failed to maintain in effect the bond required under the provisions of this act, or if the pawnbroker shall fail to file the annual report to the Secretary of Banking within the time stipulated in this act, or if any fact or condition exists which, if it had existed at the time of original application for such license, clearly would have warranted the Secretary of Banking originally in refusing to issue such license. Whenever the Secretary of Banking shall issue a notice of intention to revoke a license issued pursuant to this act, the pawnbroker may, within the period of thirty (30) days provided in the notice, appeal from such action to the court of common pleas of a county in which the pawnbroker's licensed place of business is situated. Whenever such license is revoked, the Secretary of Banking shall not issue another to the said pawnbroker until the expiration of at least one year from the date of revocation of such license and not at all if such pawn-

broker shall have been convicted for a deliberate violation of this act or for a second offense.

The Secretary of Banking my require a pawnbroker licensed under this act to file special reports in addition to the annual report required under this act.

Secretary of Banking may issue rules and regulations.

The Secretary of Banking is hereby authorized and empowered to issue rules and regulations governing the records to be maintained by a pawnbroker licensed under this act, and he is further authorized and empowered to issue such general rules and regulations as may be necessary for the protection of the public and to insure the proper conduct of such business, and for the enforcement of this act, which rules and regulations shall have the force and effect of law.

The Secretary of Banking and any person designated by him may investigate business and examine the bills of any pawnbroker.

Section 9. Examination by the Secretary of Banking.—The Secretary of Banking and any person designated by him for that purpose may at any time investigate the business and examine the books, accounts, records, and files therein of every pawnbroker and of every person who or which shall be engaged in the business of pawnbroking whether such person shall act or claim to act as principal or agent, or under or without the authority of this act. For this purpose the Secretary of Banking shall have free access to the office and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. A person, who is not licensed under this act, shall be presumed to be engaged in the business of pawnbroking if he advertises or solicits business as a pawnbroker as defined in this act, and the Secretary of Banking is in such cases authorized to examine the books, accounts, papers, files, safes, and vaults of such person for the purpose of discovering violations of this act.

Pawnbroker to pay the costs of such examination.

The costs of every examination of the business of a licensed pawnbroker by the Secretary of Banking shall be paid by the pawnbroker so examined, and the Secretary of Banking may collect such costs from the surety company which has executed the bond required under this act, and he may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Pawnbrokers must file annual reports concerning their business.

Section 10. Reports to the Secretary of Banking.—Every pawnbroker licensed under this act shall annually, on or before the first day of March, file a report with the Secretary of Banking giving such relevant information as the Secretary of Banking may require concerning the business and operations during the previous calendar year of such licensed place of business conducted by the pawnbroker within this Commonwealth. Such report shall be made under oath and shall be in the form prescribed by the Secretary of Banking. For failure to file such report within the time specified, a pawnbroker shall pay to the Secretary of Banking a penalty of ten

($10.00) dollars for each calendar day which such report is overdue, but the Secretary of Banking may, in his discretion, relieve a pawnbroker of any portion or all of such fine.

Pawnbrokers must keep accurate records of the business transacted by them.

Section 11. Records Required.—Pawnbrokers licensed under this act shall maintain adequate records of all business transacted containing such information and in such form as shall be prescribed by the Secretary of Banking by general rule or regulation. The records of pawnbrokers shall be maintained in the English language. The records of a pawnbroker shall be retained for a period of two years after the date of the payment of any loan, or in case the loan is not paid, the records of a pawnbroker shall be retained for a period of two (2) years after the date of the sale of the pledge.

Interest and charges.

Section 12. Interest and Charges.—A pawnbroker shall not charge, contract for or receive interest in excess of six per cent (6%) per year on any loan.

In addition to interest at the rate of six per cent (6%) per year, a pawnbroker may charge and collect from the pledger fees for storage, insurance, investigation, and other services which shall be—

Rates.

A. Not more than two per cent (2%) per month for the first three (3) months, and one and one-fourth per cent (1¼%) per month thereafter*, nor less than one per cent (1%) per month on loans of fifty dollars ($50.00), or less, including renewals thereof, and one per cent (1%) per month on loans in excess of fifty dollars ($50.00) for which jewelry, watches, gems, gold or sterling ware has been pledged: Provided, however, That the Secretary of Banking shall, upon the effective date of this act, fix the fees within the limitations prescribed, and thereafter the Secretary of Banking may increase or decrease such fees within the limitations prescribed.

B. Not more than two and one-half per cent (2½%) per month on loans for which other personal property has been pledged.

How interest and charges are to be computed.

The interest and charges authorized by this act shall be computed at the rates specified on the actual principal balance of the loan due for the actual time which has elapsed from the date of the loan to the date of payment. For the purpose of calculation of interest and charges permitted under this act, a year shall be twelve (12) calendar months, and a month shall be one calendar month, or any fractional part thereof. A calendar month shall be any period from a certain date in one month to the same date in the next succeeding month.

A minimum of twenty-five ($.25) cents on loans of five dollars ($5.00), or less, and a minimum of fifty

* "threafter" in the original.

cents ($.50) on loans in excess of five dollars ($5.00) may be collected on any loan for interest and charges.

No greater interest nor other fees, fines, charges or costs shall be charged, contracted for or received, directly or indirectly, under any pretext whatsoever. Interest and charges permitted under this act shall not be collected or deducted in advance.

The lowest rate applicable to a portion of the pledge shall be charged for storage when the pledge on a loan consists of two or more articles of personal property which are not in the same classification as set forth in this section as a basis for determining storage charges. This provision shall not be construed to prevent a pawnbroker from granting two separate loans to the same individual on two or more articles of personal property and charging the respective storage charge applicable to each classification,

Penalty for the violation of provisions of this section.

A pawnbroker who charges, contracts for or receives interest or charges greater than permitted under this act shall forfeit both principal and interest, and shall return the pledge upon demand of the pledger, and surrender of the pawn ticket without tender or payment of principal or interest. A pledger, borrowing money from a pawnbroker licensed under this act, who shall have paid any interest and charges in excess of those prescribed and allowed by the provisions of this act, shall be entitled to recover back from the pawnbroker, by action at law commenced within six months from the date of the last payment, any and all interest and charges paid in excess of those permitted under this act, and in addition fifty ($50.00) dollars as a penalty to be paid to the pledger: Provided, That the records of the pawnbrokers shall be prima facie evidence of interest or charges which have been contracted for or received by the pawnbroker. Nothing in this section shall be construed as prohibiting the pawnbroker from charging the pledger for actual expenses incurred for mailing when a pledge is redeemed by mail.

Pawnbroker shall enter on his records a description of the pledger.

Section 13. Identity of Pledger.—At the time of granting an original loan, the pawnbroker shall enter upon his records, in the form and manner designated by the Secretary of Banking, a description of the pledger so as to identify the pledger.

Pawnbroker must furnish pledger with a pawn ticket when making a loan.

Section 14. Pawn Ticket.—At the time of granting a loan and upon the subsequent renewal of any loan, the pawnbroker shall furnish to the pledger a pawn ticket which is serially numbered and which shall contain the following information—name and address of the pawnbroker, the name and address of the pledger, name and address of disclosed principal, if any, the date of the loan, the amount actually loaned, the serial number of the loan, description of the pledge, due date of the loan,

the total amount of principal, interest and charges required to redeem the pledge on the due date, a statement setting forth that the pledge may be sold after ninety (90) days of the due date of the loan if not redeemed. A pawnbroker may insert additional provisions on the pawn ticket not inconsistent with this act, and he shall insert such other provisions as may be required by the Secretary of Banking.

A duplicate copy of the pawn ticket shall be retained by the pawnbroker for his record.

The pawnbroker shall require the pledger to surrender the original pawn ticket when the pledge is released or the loan is renewed.

Pledger may assign his ticket.

Section 15. Negotiability of Ticket.—The pledger may, by delivery of the pawn ticket, assign all his right, title, and interest in a pawn ticket and the pledge described therein. Except as otherwise provided in this act, the person presenting a pawn ticket to the pawnbroker shall be presumed to be the pledger and shall be entitled to redeem the pledge, and the pawnbroker shall deliver the pledge to the person presenting such pawn ticket upon payment of principal, interest, and charges on the loan and upon surrender of the pawn ticket.

Pledger to notify pawnbroker of loss of ticket.

Section 16. Loss of Ticket; Seizure of Ticket or of Property Offered as Pledge.—Notice of a pawn ticket which has been lost, destroyed or stolen shall be furnished to the pawnbroker by the pledger in person or by registered mail. The receipt of notice by registered mail of a lost, destroyed or stolen ticket or the issuance of a stop ticket by the pawnbroker after personal notice by the pledger of a lost, destroyed or stolen ticket shall be treated by the pawnbroker as a stop against the loan.

Pledger must make an affidavit of the fact.

The pawnbroker shall require the alleged pledger to furnish an affidavit as to the loss, destruction or theft of the pawn ticket if the loan is in excess of five dollars ($5.00), and a statement in writing if the loan is five dollars ($5.00), or less. The pawnbroker, upon receipt of such affidavit or written statement, shall permit the pledger to redeem the loan or shall furnish the pledger with a duplicate pawn ticket, and the pawnbroker shall not be liable for any pledge released on such affidavit or written statement, unless previous written notice by registered mail of an adverse claim was received by the pawnbroker or a stop ticket was issued by the pawnbroker.

When lost ticket presented, pawnbroker must seize and retain said ticket.

Whenever a pawn ticket is presented to a pawnbroker, which pawn ticket has previously been reported to such pawnbroker as lost or stolen, the pawnbroker may seize and retain such pawn ticket on behalf of the rightful owner without incurring any liability whatsoever to the person presenting such pawn ticket.

Whenever any property is offered to a pawnbroker as a pledge which is stolen property or which the pawnbroker has reason to believe is stolen property, he may seize such property without incurring any liability whatsoever, either civil or criminal. Upon such seizure of property, a seizure receipt therefor shall be issued by the pawnbroker to the person from whom the property was seized. Such property and a copy of the seizure receipt shall be delivered immediately by the pawnbroker to the police authorities.

Stolen property offered as a pledge.

Section 17. Altered Ticket.—Whenever a pawn ticket has been altered, the pawnbroker's records shall govern, and the pawnbroker shall deliver the pledge according to the terms of the pawn ticket as originally issued, and shall be relieved of any other liability to the pledger or holder of the ticket.

Section 18. Counterfeit Ticket.—Whenever a pawn ticket is presented to a pawnbroker which is found to be counterfeit, the pawnbroker may seize and retain such counterfeit pawn ticket on behalf of the rightful owner of the pawn ticket without incurring any liability whatsoever to the person presenting such pawn ticket.

Section 19. Payment or Renewal.—A loan granted under the provisions of this act shall not be repayable in installments.

Loans are not repayable in installments.

A pledge taken as security on a loan granted under the provisions of this act may be retained by the pawnbroker until a period of forty-eight (48) hours has elapsed since such pledge was received by the pawnbroker.

A pawnbroker shall, upon receipt of interest and charges, renew a loan for the original amount for a period of eight (8) months after the date of the original loan; a pawnbroker shall not grant any loan or renew any loan, with or without a reduction of the principal balance, for a period in excess of twenty (20) months from the date when the loan was originally granted on loans originally made in amounts of fifty ($50.00) dollars, or less, or for a period in excess of thirty (30) months from the date when the loan was originally granted on loans originally made in amounts in excess of fifty ($50.00) dollars. Interest and charges on a loan shall not be compounded, nor may the interest or charges be added to the principal balance, when a loan is renewed, for an amount greater than the principal amount due at the time of renewal. The pledger shall, however, have the privilege of paying the loan in full at any time subsequent to forty-eight hours after the granting of the loan by payment of principal, interest, and charges authorized under the provisions of this act.

Pawnbroker may renew a loan.

Whenever a loan is renewed, a new pawn ticket shall be furnished to the pledger as required under this act.

Pawnbroker liable for property lost or destroyed, if he is negligent.

Section 20. Care of Pledge.—A pawnbroker shall be liable for partial or total loss of a pledge or for damage thereto when caused by failure by the pawnbroker to exercise reasonable care in regard thereto or by fire, theft or burglary resulting from failure by the pawnbroker to exercise reasonable care in regard thereto; and he shall not be liable in the absence of an express written agreement to the contrary for the loss of a pledge, or part thereof, or for damage thereto, which could not have been avoided by the exercise of such reasonable care. The burden of proof to establish reasonable care shall be upon the pawnbroker. The Secretary of Banking may require a pawnbroker to carry adequate insurance on pledges if the financial responsibility of the pawnbroker does not assure adequate protection to the pledger.

Pawnbroker to have a first lien on all pledged property.

Section 21. Pawnbroker's Lien on Pledge.—The pawnbroker shall have first lien on all pledges for the amount of his loan, interest, and charges in all cases, except where the pledging or possession thereof by the pledger constituted larceny at common law, or except where a prior lien exists by virtue of any other statute.

Except as otherwise provided in this act, a pawnbroker shall not be required by legal process, or otherwise, to deliver a pledge without surrender of the pawn ticket unless the pawn ticket has been impounded or its negotiation enjoined by a court of competent jurisdiction.

Court to determine adverse claims to pledge.

Section 22. Adverse Claims to Pledge.—Whenever more than one person claims the right to redeem a pledge, the pawnbroker shall incur no liability for refusing to deliver the pledge to either claimant until the respective rights of the claimants shall have been determined by a court of competent jurisdiction.

Whenever an action at law is brought against the pawnbroker for recovery of a pledge claimed by more than one person he may as a defense require all known claimants to interplead.

Whenever more than one person claims the right to redeem a pledge and no action is brought against the pawnbroker by either claimant within the period for which he is required to hold a pledge after the due date of the loan, or within thirty (30) days after notice of adverse claim, he may proceed to sell the pledge and hold the surplus, if any, for the period of time required under this act, subject to adjudication or other adjustment of the claimants' rights.

Pawnbroker may sell the pledge.

Section 23. Sale of Pledge.—Upon default in the payment of any loan, a pawnbroker may sell the pledge upon the conditions contained in this section.

Private sale.

A pawnbroker may sell a pledge at private sale for an amount not less than that agreed to by the pledger,

which amount shall be stipulated on the pawn ticket and shall not be less than one hundred twenty-five per cent (125%) of the amount of the loan. A pledge which cannot be sold at private sale at the minimum price agreed to by the pledger must be sold at public auction.

No unredeemed pledge may be sold before the expiration of ninety (90) days after the due date of the loan unless otherwise specifically authorized in writing by the pledger. This authority to sell an unredeemed pledge prior to the expiration of ninety (90) days after the due date of the loan must be given by the pledger on a date subsequent to the due date of the loan.

An unredeemed pledge shall be sold within twelve months of the due date of a loan. No interest or charges permitted under this act may be collected on a loan after the expiration of twelve months of the due date of a loan, whether the loan is renewed, or the loan is paid and the pledge redeemed. Where the pawnbroker has failed to sell the pledge within six months of the due date of the loan, no such interest or charges may be computed for the period after six months of the due date of a loan in determining the surplus due the pledger if a pledge is sold subsequent to six months after the due date of a loan.

Pawnbroker must send notice of sale to pledger.

Section 24. Notice of Sale.—A pawnbroker shall not sell any pledge unless due notice of such contemplated sale has been forwarded to the pledger by mail to the address given by the pledger at the time of obtaining the loan or to such new address of the pledger, as shown on the pawnbroker's record. Notice of the contemplated sale of a pledge shall be mailed to the pledger not less than thirty (30) days prior to the date of sale. Such notice shall state total amount of principal, interest, and charges due on the loan as of the date of the notice.

Disposition of proceeds after the sale.

Section 25. Disposition of Proceeds.—The proceeds from the sale of a pledge shall be applied, in the order specified, to the following purposes: Payment of the auctioneer's charges if sold at public auction, or commission for selling not to exceed five per cent (5%) if sold at private sale; payment of principal of the loan; payment of the interest on the loan permitted under this act, and payment of the charges on the loan permitted under this act; payment of postage for mailing notice to the pledger of the contemplated sale or notice of the surplus. The surplus, if any, shall be paid to the pledger or such other person who would have been entitled to redeem the pledge had it not been sold.

Surplus to be paid to pledger or person entitled.

Notice of surplus after sale must be sent to pledger.

Section 26. Notice of Surplus.—Notice of any surplus from the sale of a pledge shall be forwarded to the pledger within ten days of the date of sale by mail to the address given by the pledger at the time of obtain-

ing the loan or to such new address of the pledger, of which the pawnbroker has received notice.

Section 27. Reversion of Surplus.—If a surplus remaining from the sale of a pledge is not paid or claimed within one year from the date of sale, such surplus shall revert to the pawnbroker. The pawnbroker shall not be required to pay any interest on an unpaid surplus.

Section 28. Business Hours.—A pawnbroker shall not transact any business on Sunday, nor shall he accept a pledge on any other day between the hours of nine o'clock in the evening and seven o'clock in the morning, unless further restricted by municipal ordinance.

Section 29. Business with Minors.—A pawnbroker shall not accept a pledge from any person under the age of twenty-one years.

Section 30. Scope of Act.—This act shall not affect any existing laws, special or general, authorizing a charge for the loan of money in excess of interest at the legal rate. This act shall not apply to any person, persons, partnership, association or corporation operating under the laws relating to banking institutions, building and loan associations, credit unions, or conducting business under a license issued by the Secretary of Banking of the Commonwealth of Pennsylvania under the provisions of any other statute.

Municipalities may also regulate pawnbrokers.

This act shall not prevent or preclude any municipality from imposing other and further requirements or regulations of pawnbrokers not inconsistent with this act or the rules and regulations issued by the Secretary of Banking pursuant thereto, nor shall such municipality be prevented or precluded from providing such further supervision of pawnbrokers as may be deemed necessary or advisable for the police purposes of such municipality or from enforcing the same. Any such provisions or requirements under existing laws, ordinances or regulations of any municipality, not inconsistent with this act, shall remain in full force and effect.

A pawnbroker shall not be authorized to engage in business unless he shall have obtained a license from the municipality, if the municipality requires such a license to be obtained. The fee for such a license shall not exceed two hundred dollars ($200.00) in the case of cities of the first and cities of the second class, and one hundred dollars ($100.00) elsewhere.

The municipality issuing such license may, for violation of police regulations, suspend such license for a period of thirty (30) days. Immediately upon such suspension, the municipality shall give written notice to the Secretary of Banking, who shall, within thirty (30) days thereafter, conduct a hearing to ascertain if the license required by this act shall be revoked.

However, if, after such hearing, the Secretary of Banking shall determine that the license required by this act, shall not be revoked, written notice thereof shall be given to the municipality, and thereupon the suspension of municipal license shall be automatically dissolved by operation of law.

Licenses issued by municipalities shall impose no conditions inconsistent with the provisions of this act.

Whenever any pawnbroker shall make a complete and accurate report to the local police authorities, and shall comply with this act, and such regulations of the Secretary of Banking as may hereafter be adopted pursuant thereto, such conduct on the part of the pawnbroker shall be evidence of the innocence of such pawnbroker of any crime of receiving stolen goods, notwithstanding the fact that the articles may, in fact, be stolen: Provided, That nothing contained in this section shall be interpreted as limiting or interfering with the title to or right of possession of the lawful owner of such articles.

Penalties.

Section 31. Penalties.—Any persons, partnership, association or corporation, or any partner, director, officer, agent or member thereof who shall engage in the business of pawnbroking in this Commonwealth without first obtaining a license under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five hundred ($500.00) dollars nor more than five thousand ($5,000.00) dollars, and/or suffer imprisonment not less than six months nor more than three years, in the discretion of the court.

A pawnbroker licensed under the provisions of this act who shall violate any provision of this act, or shall direct or consent to such violation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand ($1,000.00) dollars for the first offense, and for each subsequent offense a like fine, and/or suffer imprisonment not to exceed one year, in the discretion of the court.

Section 32. Interpretation of Act.—The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

Section headings shall not be taken to govern or limit the scope of the sections of this act. The singular shall include the plural and the masculine shall include the feminine or neuter.

Inconsistent acts repealed.

Section 33. Repealer.—

All acts or parts of acts relating to pawnbrokers which are inconsistent herewith are hereby repealed.

When effective.

Section 34. Effective Date.—This act shall become effective on the first day of October, nineteen hundred thirty-seven.

APPROVED—The 6th day of April A. D. 1937.

GEORGE H. EARLE

The foregoing is a true and correct copy of Act of the General Assembly No. 51.

David L. Lawrence

*Secretary of the Commonwealth*

## EXHIBIT "B".

IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT

No. 33—May Term, 1940

EQUITABLE LOAN SOCIETY, INC., et al., Appellants,

v.

JOHN C. BELL, JR., Secretary of Banking of the Commonwealth of Pennsylvania; Robert W. Doty, Deputy Secretary of Banking of the Commonwealth of Pennsylvania; and O. B. Lippman, Chief of Credit Unions and Small Loan Companies of the Department of Banking of the Commonwealth of Pennsylvania, Appellees.

Appeal from Decree of the Court of Common Pleas of Dauphin County, as of No. 1337 Equity Docket, 1937, and No. 356 Commonwealth Docket, 1937.

### Opinion of the Court.

DREW, *J.*

The Pawnbrokers License Act, approved April 6, 1937, P. L. 200, provides for the licensing and regulating of the business of pawnbrokers, empowers the Secretary of Banking to issue and revoke licenses, to make examinations and promulgate regulations, limits the interest and charges on loans, provides for the keeping of record by pawnbrokers, and prescribes penalties for violation of the Act. Approximately two weeks prior to October 1, 1937, the effective date of the Act, this bill in equity was filed to restrain the Secretary of Banking, and certain of his subordinates, from enforcing the Act against the sixty-three named plaintiffs (appellants here); and a preliminary injunction was issued. The bill alleged the Act to be unconstitutional in many respects. The preliminary objections raised by defendants having been overruled, they answered on the merits, and a final hearing was held. After the introduction of extensive testimony and the hearing of arguments upon the requests for findings of fact and conclusions of law, the learned court below entered a decree *nisi*, upholding the constitutionality of the Act, dissolved the injunction, and dismissed the bill.

On February 15, 1940, plaintiffs exceptions were overruled and the decree was made final. This appeal followed.[1]

This enactment is the first attempt at state-wide regulation of the pawnbroking business in Pennsylvania. Previously, by statute, the control was lodged exclusively in municipalities.[2] At the present time there are between 150 and 175 pawnbroking establishments in the State, of which about 100 are located in Philadelphia. There has been considerable agitation for state supervision during the last fifteen years. The Department of Banking conducted a study of the business, especially with reference to the rates charged, reported the result of its investigation with recommendations to the legislature, and passage of the Act of 1937 followed.

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[1] The interest of each of the sixty-three appellants is separate and distinct; therefore the joint appeal to this court is improper: *Schuetz's Est.*, 315 Pa. 105. However, in view of the importance to the public of the questions to be decided, we shall treat the appeal as though it were properly before us.

[2] As to Philadelphia: see Act of March 8, 1823, P. L. 62; Act of February 24, 1859, P. L. 74. The business is specifically regulated by the Ordinance of January 19, 1856, as supplemented February 16, 1856; as amended by the Ordinance of June 22, 1908; as further amended by the Ordinance of March 17, 1919. By reason thereof, a pawnbroker is entitled to receive six per cent per annum as interest, and a sum not exceeding five per cent per month "for storage and other necessary expenses". See also: *Hunt* v. *Philadelphia*, 35 Pa. 277.

As to Cities of the Second Class: see Act of March 18, 1875, P. L. 7, section 7; Act of March 7, 1901, P. L. 20, art. XIX, section 3, cl. XXII. See also: *Scranton* v. *Engel*, 39 Pa. Superior Ct. 534.

As to Cities of the Third Class: see Act of May 23, 1874, P. L. 230, section 20, cl. 4; as repealed and supplanted by Act of June 23, 1931, P. L. 932, section 2601; as amended by the Act of May 22, 1933, P. L. 927; as further amended by the Act of July 12, 1935, P. L. 718.

See generally: *Foster's Application*, 23 Dist. 558, 559, 560, (affirmed 60 Pa. Superior Ct. 8).

The Act of May 7, 1907, P. L. 175, defined pawnbrokers and imposed a license tax, graduated according to gross annual receipts, upon them. Pawnbrokers are also required to pay a mercantile tax upon their business of retail merchandising done in connection with pawnbroking.

It is undisputed that each of the sixty-three plaintiffs had fully complied with the applicable portions of the above requirements, and was fully licensed and lawfully conducting business at the time the Act of 1937 took effect.

In challenging the constitutionality of the Act, plaintiffs are faced with the familiar principle that he who asks to have a law declared unconstitutional takes upon himself the burden of proving beyond all doubt that it is so, since all presumptions are in favor of its constitutionality, and courts are not to be astute in finding or sustaining objections thereto: *Hadley's Case,* 336 Pa. 100, 104. "The legislature is the sole judge of the wisdom and expediency of a statute, as well as of the necessity for its enactment, and whether the legislation be wise, expedient or necessary is without importance to the court in determining its constitutionality. In other words, the assembly has a free hand to legislate on every subject in such manner as it deems proper unless there is a constitutional prohibition clearly expressed or necessarily implied": *Commonwealth* v. *Grossman,* 248 Pa. 11, 15.

The record is in large measure devoted to plaintiffs' attempt to prove that the charges allowed [3] for storage, insurance, and investigation, both as prescribed by the Act, and as actually established by the regulations, of the Secre-

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[3] Section 12 of the Act provides, *inter alia*: "In addition to interest at the rate of six per cent (6%) per year, a pawnbroker may charge and collect from the pledger fees for storage, insurance investigation, and other services which shall be—

"A. Not more than two per cent (2%) per month for the first three (3) months, and one and one-fourth per cent (1¼%) per month thereafter", nor less than one per cent (1%) per month on loans of fifty dollars ($50.00), or less, including renewals thereof, and one per cent (1%) per month on loans in excess of fifty dollars ($50.00) for which jewelry, watches, gems, gold or sterling ware has been pledged: Provided, however, That the Secretary of Banking shall, upon the effective date of this act, fix the fees within the limitations prescribed, and thereafter the Secretary of Banking may increase or decrease such fees within the limitations prescribed.

"B. Not more than two and one-half per cent (2½%) per month on loans for which other personal property has been pledged. • • •

"A minimum of twenty-five ($.25) cents on loans of five dollars ($5.00), or less, and a minimum of fifty ($.50) cents on loans in excess of five dollars ($5.00) may be collected on any loan for interest and charges."

Prior to the effective date of the Act, and in pursuance thereof, the Secretary of Banking, without notice or hearing, fixed one per cent per month as the maximum storage charge which might be made on loans of $50 or less, secured by pledges of jewelry, watches, gems, gold or sterling.

tary of Banking, are so low as to be confiscatory and to deprive them of all opportunity to earn a reasonable return upon their capital invested in the pawnbroking business. As regards fifty-four of the plaintiffs, they did not produce anything to show the effect of the new rates upon their businesses. They were content to stipulate that evidence should be presented as to but nine of the plaintiffs, and that their cases should be regarded as typical of all. Confiscation as to the other fifty-four could not possibly be shown in this way. Each individual business is a separate problem. The recurrence of such imponderables as efficiency and good will defies the attempt to make the conditions existing in a few businesses representative of those in all others. The burden of showing oppression from regulation is a heavy one (*Townsend* v. *Yeomans*, 301 U. S. 441, 451), and a person so objecting is required to demonstrate the unconstitutionality of its application as to himself alone, not as to the members of his class generally (see *Pennsylvania Railroad Company* v. *Driscoll*, 336 Pa. 310, 335). As to the nine selected plaintiffs, we have made a careful examination of the voluminous record as to the nature and scope of their business, and the statements and calculations showing the operations for the years 1936, 1937, and 1938, and our conclusion is the same as that of the learned court below, that plaintiffs failed to prove that the rates proposed are confiscatory. This is not surprising because the burden was extremely difficult to carry: see *City of Knoxville* v. *Knoxville Water Company*, 212 U. S. 1, 15, 18; *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163, 170, 171; *Townsend* v. *Yeomans*, supra, 451.

But even if confiscation had been shown, it would have made no difference, because the Commonwealth under its police power can prohibit the pawnbroking business entirely. Plaintiffs cannot, therefore, successfully claim a violation of their fundamental rights because of a regulation, falling short of complete suppression, which is not arbitrary, nor discriminatory, and which bears a reasonable relation to a proper legislative purpose.

Actions which are injurious to the public may be suppressed, prohibited, or regulated, and all private rights must yield to the exercise of this paramount power. In

*Commonwealth* v. *Vrooman*, 164 Pa. 306, 321, a case dealing with legislative regulation of the sale of fire insurance policies, Mr. Justice Williams said: "The police power of a state may be exerted for the complete or the partial control of a given business. It may prohibit it absolutely to all persons for the purpose of suppression. It may permit it to some persons and under certain restrictions in order to secure control over it and hold it within proper bounds: Stone v. Mississippi, 101 U. S. 814. The Sunday laws, the laws against gambling, against lotteries, against disorderly houses, the sale of liquors, the sale of oleomargarine, the sale of drugs, and many similar laws afford instances of the exercise of the police power for the complete suppression of a given line of employment, or for its restriction and control." There are many instances of entirely lawful callings, which have been forbidden by the legislature, and which have futilely invoked the due process clause in resistance to a necessary and appropriate exertion of the police power.[4] What the state can prohibit entirely, it can regulate: *Commonwealth* v. *Stofchek*, 322 Pa. 513, 519; *Illinois Cigarette Service Co.* v. *City of Chicago*, 89 F. (2d) 610, 612. The principle was thus expressed by Mr. Justice Brown: "Uncompensated obedience to a regulation enacted for the public welfare or safety, under the police power of the State, is not taking property without due compensation, and any injury sustained in obeying such a regulation is but damnum absque injuria: New Orleans Gas Light Company v. Drainage Commission of New Orleans, 197 U. S. 453.": *Pennsylvania Railroad Co.* v. *Ewing*, 241 Pa. 581, 591. Mr. Justice Waite struck the keynote common to all businesses,

[4] As concrete illustrations: the sale and manufacture of liquor: *Mugler* v. *Kansas*, 123 U. S. 623; the sale and manufacture of oleomargarine: *Powell* v. *Pennsylvania*, 127 U. S. 678; the sale of cigarettes: *Austin* v. *Tennessee*, 179 U. S. 343; the sale of futures in grain or other commodities: *Booth* v. *Illinois*, 184 U. S. 425; the sale of stocks on margin: *Otis* v. *Parker*, 187 U. S. 606; billiard hall establishments: *Murphy* v. *California*, 225 U. S. 623; the sale of malt liquors: *Purity Extract and Tonic Company* v. *Lynch*, 226 U. S. 192; the sale of drugs by itinerant vendors: *Baccus* v. *State of Louisiana*, 232 U. S. 334; the sale of trading stamps: *Rast* v. *Van Deman & Lewis Company*, 240 U. S. 342; peddling: *Commonwealth* v. *Brinton*, 132 Pa. 69; the sale of filled milk: *Carolene Products Company* v. *Harter*, 329 Pa. 49.

which have been held subject to complete prohibition or stringent regulation under the police power, when in *Stone* v. *Mississippi*, 101 U. S. 814, 821, he said: "They are not, in the legal acceptation of the term, *mala in se*, but, as we have just seen, may properly be made *mala prohibita*."

The pawnbroking business falls within this class. It is a business subject to the strictest regulation under the police power: *Elsner Brothers* v. *Hawkins*, 113 Va. 47, 49; *The City of St. Joseph* v. *Levin*, 128 Mo. 588, 594; see *Commonwealth* v. *Danziger*, 176 Mass. 290, 291; *City of St. Louis* v. *Baskowitz*, 273 Mo. 543, 565. At common law, the taking of money for the use of money was prohibited. It was only by express legislative grace that the business of pawnbroking (*Foster's Application*, supra, 559), or for that matter the charging of interest by anyone (*Adinolfi* v. *Hazlett*, 242 Pa. 25, 29), was permitted in this Commonwealth. A privilege was given which the common law denied, and which the sovereign can withdraw or limit at any time. The fact that plaintiffs had paid the license tax exacted by the Act of 1907, and that they were lawfully operating under licenses granted by municipalities at the time the Act of 1937 became operative is immaterial. They did not by reason thereof acquire any vested right to continue in the business. For, as was said by Mr. Justice Holmes, in *Truax* v. *Corrigan*, 257 U. S. 312, 342, 343: "It [an established business] is a course of conduct and like other conduct is subject to substantial modification according to time and circumstances both in itself and in regard to what shall justify doing it a harm." When Indiana pawnbrokers raised a similar contention, Mr. Chief Justice Shake answered them in this manner: "Provisions for licenses of the character here involved are an exercise of the police power. Such licenses are not contracts and do not create vested interests. The sovereignty may give and the sovereignty may take away. McKinney et al. v. Town of Salem, 1881, 77 Ind. 213. The fees exacted for such licenses are not taxes. There is, therefore, nothing inherently obnoxious in the requirements that persons engaging in such business shall have two licenses, one issued by the state and another by a political subdivision or public corporation.": *Medias*

v. *City of Indianapolis*, —— Ind. ——, ——, 23 N. E. (2d) 590, 594.

It will hardly be denied that the business of pawnbroking is almost certain to become inimical to the public good if conducted without restrictions. The history of the business is not encouraging. Thousands of men and women who patronize these establishments are driven by their necessities to accept loans upon any terms offered. It is so easy to take advantage of people in these circumstances, and the temptation to do so is so great, that experience teaches that the State must protect them. There is no equality of bargaining power. For these, and other reasons, the appellate courts of sister states have been uniformly of the opinion that a state may suppress or regulate the pawnbroker: *The City of St. Joseph* v. *Levin*, supra, 594; *Launder* v. *The City of Chicago*, 111 Ill. 291, 298; *Kuhn* v. *City of Chicago*, 30 Ill. App. 203, 204; *Elsner Brothers* v. *Hawkins*, supra, 49; see *The City of Grand Rapids* v. *Braudy*, 105 Mich. 670, 676; *City of St. Louis* v. *Baskowitz*, supra, 565, 566. In *Ex Parte Lichtenstein*, 67 Cal. 359, 361, it was said: "It is well known that persons frequenting the offices of pawnbrokers are generally the reckless and needy and improvident, who require the protection of the law. To no other class of moneylenders do the same reasons apply. Men driven by the necessities of their situation resort to the pawnbroker, and pledge any and all articles in their possession in order to raise money, and they are not particular about the rate of interest charged them." In *Medias* v. *City of Indianapolis*, supra, 594, "* * * there was much uncontroverted evidence that thieves and receivers of stolen property frequently resort to pawnbrokers as an outlet for their ill-gotten means * * *", and that "* * * where the pawnbroking business is strictly regulated larceny is greatly reduced."

In answer to plaintiffs' assertion that pawnbroking is a legitimate enterprise, and should be treated as other businesses, we need only say that the legislature has now declared it to be unlawful and its conduct a misdemeanor unless carried on in conformity with the restrictions set forth in the Act of 1937. In this connection, Mr. Justice

Henshaw, in *Levinson* v. *Boas,* 150 Cal. 185, 192, said of pawnbroking: "• • • it is to be borne in mind that we are not dealing with a harmless and legitimate business requiring no regulation, and which, if licensed at all, could be licensed only for purposes of revenue. We are dealing with a business which is, and always has been, subject to police regulation, and which is unlawful if not conducted under the provisions, restrictions, and requirements of the law."

The remaining points require less discussion. It is a mistake to say that the Pawnbrokers License Act results in a denial of the equal protection of the laws because pawnbrokers are thereby treated differently than the lenders of money covered by the Consumer Discount Company Act of April 8, 1937, P. L. 262, and the Small Loans Act of June 17, 1915, P. L. 1012, as most recently amended by the Act of May 28, 1937, P. L. 989. The learned court below aptly answered: "These acts belong to a different classification and hence operate within their respective spheres." The legislature was fully aware of the features now urged as being common to all three businesses (Legislative Journal, 1937, p. 1073), but chose to impose more stringent regulation upon pawnbroking. In view of the conditions and temptations known to exist in that business, we cannot label the classification unreasonable: see *Commonwealth* v. *Puder,* 261 Pa. 129, 137; *Eaker* v. *Bryant,* 24 Cal. App. 87, 92. "If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law.": *Central Lumber Company* v. *State of South Dakota,* 226 U. S. 157, 160, 161. All lenders do not have to be dealt with alike, if the practice of one class makes extra precaution necessary as to them, "• • • it would be going an unwarranted length to hold that the state police power must either leave them entirely alone or else provide the same regulations, regardless of any need for them, for like loans made by all other classes of money lenders.": *In re Home Discount Co.,* 147 Fed. 538, 546. In *Ex Parte Sohncke,* 148 Cal. 262, 268, the court said: "The business of pawnbroking is one well known to the law,

and constitutes of itself a distinct class of persons and things which may be properly regulated by a law applying to them alone * * *."

Nor do we agree that "delegation running riot" results from the provisions empowering the Secretary of Banking to (a) grant licenses to pawnbrokers, (b) conduct investigations of pawnbrokers' establishments at their expense, (c) allow recovery by creditors on bonds filed by pawnbrokers, or (d) fix the rates as to certain types of loans within the narrow limits prescribed by the Act. In connection with the granting of licenses, in *National Automobile Corporation v. Barfod,* 289 Pa. 307, 311, 312, this court stated: "* * * in cases wherein the State is exercising its sovereign functions, such as the control of public officers, withdrawal of governmental prerogatives, and the granting of licenses * * * notice and hearing are not necessary." In all the above four instances of the exercise by the Secretary of Banking of the enumerated powers a right to judicial review of his administrative acts exists. The courts are always open to the victims of arbitrary or capricious action. In *Harris v. State Board of Optometrical Examiners,* 287 Pa. 531, 534, Mr. Justice Kephart said: "Where the statute provides no right of appeal to the courts from the determination of administrative tribunals on constitutional grounds, the right will be implied: Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531, 547; Buffalo B. Mut. Film Corp. v. Breitinger, 250 Pa. 225, 242."

It is urged that section 8 is objectionable in setting forth no standard as a guide to the exercise of official discretion. It is therein provided: "The Secretary of Banking shall have the power to reject any application for license [a] if he is satisfied that the financial responsibility, experience, character, and general fitness of the applicant or applicants is not such as to command the confidence of the community and to warrant the conclusion that the business will be operated honestly, fairly, and within the laws of this Commonwealth, or [b] if he is not satisfied that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted * * *." It is not

difficult to find precedents to support the vesting of administrative bodies with a discretion so limited. In *Commonwealth v. Puder*, supra, where this court considered the constitutionality of the Small Loans Act, we expressly approved (p. 138) a delegation to the Banking Commissioner of the power to license applicants, the terms of which were defined by practically the identical language to be found in clause [a] above. As to clause [b], in *Bank of Italy v. Johnson*, 200 Cal. 1, the court had before it a case involving the delegation by the legislature to the Superintendent of Banking of the power to permit branch banks when "• • • he has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of the branch office." After reviewing the authorities, the court said (p. 15): "We therefore conclude that the discretion so lodged in the superintendent of banks in this state is a lawful delegation of authority to him." "Confidence", "convenience", and "advantage", are to our mind quite tangible attributes, but there can be no legislative definition of them that can automatically attach to or identify the individuals possessing them nor the exact situations to which they may become applicable, and necessarily some executive agency must be invoked. To need plaintiffs' contention and to hold the delegation improper would take from government one of its most essential instrumentalities, of which the various national and state commissions are instances: see *Hall v. Geiger-Jones Company*, 242 U. S. 539; 553; *Noble v. English*, 183 Iowa, 893; *State ex rel. The Port Royal Mining Company v. Hagood*, 30 S. C. 519, 525.

In conclusion, there is nothing in the suggestion that the title of the Act is defective under Article III, section 3, of our Constitution. Its language is clear and specific, and invites the attention of anyone interested to examine the body of the Act to find the precise details of the regulation of pawnbrokers. "We have repeatedly held that the title need only indicate the subject matter of the act and that it need not be a synopsis of it nor index all the subdivisions thereof, nor any matters that may be fairly related to it.": *Hadley's Case*, supra, 106.

Decree affirmed; appellants to pay costs.

## EXHIBIT "C".

IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT.

MAY TERM, 1940.

No. 33.

EQUITABLE LOAN SOCIETY, INC., et al., *Appellants,*

*vs.*

JOHN C. BELL, JR., Secretary of Banking of the Commonwealth of Pennsylvania; Robert W. Doty, Deputy Secretary of Banking of the Commonwealth of Pennsylvania; and O. B. Lippman, Chief of Credit Unions and Small Loan Companies of the Department of Banking of the Commonwealth of Pennsylvania, *Appellees.*

Appeal from Decree of the Court of Common Pleas of Dauphin County, as of No. 1337 Equity Docket, 1937, and No. 356 Commonwealth Docket, 1937.

### Concurring Opinion.

LINN, *J.*

I agree that the bill should be dismissed on two grounds. First. None of the sixty-three parties plaintiff has been refused a license; until then, none should be heard to complain of the licensing provisions: compare *Interstate Buses Corp. v. Holyoke Street Railway Co.*, 273 U. S. 45, 52; *Smith v. Cahoon*, 283 U. S. 553, 562. Second. The pawnbroking business is subject to regulation by the state. This record shows that some of the plaintiffs, though complying with the statute, can make a reasonable profit. The fact that others cannot, does not permit the court to say that the statute takes property without due process; such persons are not required to stay in the business. But, while I think the argument that the act is confiscatory as applied to such a business cannot be raised at all, if it can be raised the bill is bad for misjoinder of parties plaintiff, each party having

a separate interest depending on separate evidence: see Equity Rule No. 36; *Komenarsky v. Brode*, 307 Pa. 156, 158, 160 A. 713; *Ryan v. Reddington*, 240 Pa. 350, 353, 87 A. 285; *Bishop v. Demonstration Co.*, 276 Pa. 101, 119 A. 831.

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## EXHIBIT "D".

IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT.

MAY TERM, 1940.

No. 33.

EQUITABLE LOAN SOCIETY, INC., et al., *Appellants*,

*vs.*

JOHN C. BELL, JR., Secretary of Banking of the Commonwealth of Pennsylvania, et al.

Appeal from Decree of Court of Common Pleas of Dauphin County, as of No. 1337 Equity Docket, 1937, and No. 356 Commonwealth Docket, 1937.

SCHAFFER, *C. J.*:

I am of the opinion that the pawnbroking business is a lawful one and that it cannot be prohibited under our Constitution. Being a lawful business its prohibition would be an unconstitutional deprivation of property. Particularly would this be so as to those now engaged in the business.

I agree that it can be regulated, but the regulation as to charges must be reasonable and not confiscatory, the test whether the regulation is confiscatory, as I see it, is not whether some one individual cannot earn a reasonable return upon his invested capital and for his individual efforts, but whether no one can. I think this should be tested in each individual case, in the instances of existing businesses, and as to those opening in the future, by the answer to the query whether the business can be carried on by any one at a reasonable profit under the charges fixed.

I believe that the licensing feature of the act, giving the Secretary of Banking power to reject any application upon the sole ground that in his opinion the granting of the license will not promote the convenience and advantage of the community in which the business is to be conducted, would be unconstitutional as a delegation of arbitrary power by the legislature to an individual over lawful enterprises, without the fixing of standards by the legislature for the exercise of the licensor's discretion, unless there was a guarantee of judicial review which as I understand the majority opinion sanctions.

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## EXHIBIT "E".

IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT.

MAY TERM, 1940.

No. 33.

EQUITABLE LOAN SOCIETY, INC., et al., *Appellants*,

*vs.*

JOHN C. BELL, JR., Secretary of Banking of the Commonwealth of Pennsylvania, et al.

Appeal from Decree of Court of Common Pleas of Dauphin County, as of No. 1337 Equity Docket, 1937, and No. 356 Commonwealth Docket, 1937.

### Dissenting Opinion.

STERN, *J.*:

As I view it, the basic proposition upon which the structure of the court's opinion is erected in this case is erroneous,—namely, that "even if confiscation had been shown, it would have made no difference, because the Commonwealth under its police power *can prohibit the pawnbroking business entirely.*" This court had occasion, in an opinion

filed as recently as May 13, 1940, in *Commonwealth* v. *Zasloff*, — Pa. —, to discuss the power of the legislature wholly to prohibit an industry. It was there pointed out that the decisions allowing such suppression were all cases of businesses which were regarded by the community as "inherently and generally vicious," and that it was an unconstitutional deprivation of property for the legislature absolutely to prohibit a business which in itself was neither immoral nor otherwise inimical to the public welfare and where the abuses to which it might give rise were reasonably capable of correction by regulation. There were cited cases of the United States Supreme Court so holding,— *Adams* v. *Tanner*, 244 U. S. 590; *Weaver* v. *Palmer Bros. Co.* 270 U. S. 402; *Tyson & Brother* v. *Banton*, 273 U. S. 418, 442, 443; *Fairmont Creamery Co.* v. *Minnesota*, 274 U. S. 1. In the *Fairmont Creamery Co.* case the court asked itself the question, "May the State, in order to prevent some strong buyers of cream from doing things which may tend to monopoly, inhibit plaintiff in error from carrying on its business in the usual way heretofore regarded as both moral and beneficial to the public and not shown now to be accompanied by evil results as ordinary incidents?" And the court answered this question by saying "Former decisions here require a negative answer." In the *Zasloff* case itself we held that a statute was unconstitution which forbade sales of merchandise at less than cost, on the ground that such sales were an evil only so far as abuses occurred in connection with them, and therefore, while the legislature might seek to rectify such abuses, it could not prohibit *all* sales below cost.

Is the pawnbroking business so inherently vicious that the State would be constitutionally justified in preventing its citizens from engaging in it? Possibly the best answer to be found to this question is contained in the opinion of the court in *Asakura* v. *Seattle*, 265 U. S. 332, 343, where, although the court did not decide the question whether pawnbroking could be prohibited, it had this to say of the business: "While the amounts of the loans made in that business [pawnbroking] are relatively small and the character of property pledged as security is different, the transactions are similar to loans made by banks on collateral security.

The business of lending money on portable securities has been carried on for centuries. • • • In this country, the practice of pledging personal property for loans dates back to early colonial times, and pawnshops have been regulated by State laws for more than a century. We have found no State legislation abolishing or forbidding the business. • • • While regulation has been found necessary in the public interest, the business is not on that account to be excluded from the trade and commerce referred to in the treaty. Many worthy occupations and lines of legitimate business are regulated by State and Federal laws for the protection of the public against fraudulent and dishonest practices. There is nothing in the character of the business of pawnbroker which requires it to be excluded from the field covered by the above quoted provision, and it must be held that such business is 'trade' within the meaning of the treaty."

It has been aptly said that the pawnbroker is the "poor man's banker." The differences between the business of a pawnbroker and that of a financier who makes loans to people of larger means are that, the loans in the one case being smaller and the expense of making them proportionately greater, the pawnbroker is compelled to resort to charges for storage, insurance, investigation and other services in connection with the loans, and also that the security, instead of being stocks and bonds, usually consists of tangible property. Poor people would have no way of borrowing money at all if it were forbidden them to obtain loans on the collateral of their ordinary personal and household possessions, and how could a state constitutionally abolish a business which consists of nothing more than the making of such loans? It is true that, as distinguished from the general banking industry carried on with more prosperous clients, certain abuses may tend to bring disrepute upon the pawnbroking business,—for example, as stated in the majority opinion, the exaction of exorbitant charges and the temptation to thieves to pawn, and pawnbrokers to receive, stolen property. These evils, however, are amenable to corrective regulation; the permissible fees may be reduced by legislative enactment and the receiving of stolen goods—at best a minor feature when compared with the

overwhelming majority of legitimate transactions in the business—can be, and is, checked by government surveillance. It seems to me that it would be a distinct deprivation of a right of property and of contract, and therefore a violation of the Constitution of the Commonwealth as well as of the Fourteenth Amendment of the Federal Constitution, for the State to prohibit entirely the carrying on of a business which, in itself, is not only innocuous but in almost every age and clime has apparently proved to be essential to the economic life of those financially less fortunate.

While, therefore, in my opinion, the business of pawnbroking is one that cannot be constitutionally *prohibited* by the State, it can, of course, as plaintiffs themselves admit, be *regulated* in the exercise of the police power. But the regulatory power of the State is confined, in the case of all industries affected with a public interest, to acts of reasonable regulation, and, in the case of rate-fixing legislation, that means that the maximum charges prescribed must permit those engaged in the business to receive a reasonable interest return on their capital investment. To deny such opportunity is in effect to deprive the owner of his property in the capital itself, because it is the chief beneficial attribute of capital that it may be profitably invested. Certainly, if rates legislatively fixed for public utilities must allow such a reasonable return, the same requirement, a fortiori, must exist in the case of the more private business of lending money.

During the course of an extended hearing plaintiffs produced a mass of testimony intended to demonstrate that the fees fixed by the act here in question for the storage, insurance, investigation and other services incident to the pawnbroking business did not allow of a reasonable return on the capital investment of their enterprises. The issue thus raised was, to my mind, the essential one in the case, but the court below, instead of making findings of fact which would have made it possible to ascertain therefrom whether the scale of fees established by the act was confiscatory, held in effect that this was immaterial because, whether confiscatory or not, plaintiffs had no standing to complain. In

my opinion the record should be remitted to the court below in order that this fundamental question may become capable of determination in the light of adequate factual findings necessary to its decision but now wholly lacking.

There are other rulings involved in the majority opinion which I believe to be not only erroneous but, if followed generally hereafter, likely to destroy the important safeguard of our governmental system that the legislature cannot delegate its functions and confer arbitrary authority upon officials or administrative tribunals. The act provides that in certain cases the Secretary of Banking shall, within prescribed limitations, fix the fees that the pawnbrokers are to be allowed to charge for storage, insurance, investigation and other services, and that he may thereafter increase or decrease such fees. No standard or purpose to be attained is prescribed to guide the Secretary in doing this, but the matter is left to his uncontrolled discretion. The majority opinion holds that this is unobjectionable. That such a provision is a violation of our State Constitution follows necessarily from the principle so clearly and vigorously proclaimed in *Holgate Brothers Co.* v. *Bashore,* 331 Pa. 255, where the court said (p. 260): "The legislature may, however, leave to administrative officers, boards and commissions, the duty to determine whether the facts exist to which the law is itself restricted. In all such occasions, nevertheless, the legislative body must surround such authority with definite standards, policies and limitations to which such administrative officers, boards or commissions, must strictly adhere and by which they are strictly governed." And the court further stated (p. 261), in regard to the power of the legislature to confer upon another agency the right to find facts upon which the law is to operate, that such facts generally are those "*not involving a personal decision as to whether the facts should be considered within the general policy of the law in question.*"

Equally, and perhaps even more violative of constitutional principles is the provision that the Secretary of Banking is given by the act the power to reject any application for a pawnbroker's license, even though satisfied that the financial responsibility, experience, character, and general fitness of the applicant is beyond question, if he is not

"satisfied that allowing such applicant to engage in business will promote the *convenience and advantage* of the community in which the business of the applicant is to be conducted." It is suggested in the concurring opinion of Mr. Justice Linn that this provision will be properly before the court only when an applicant has been refused a license under it. But it is discussed and approved in the majority opinion and I consider it so indefensible as to warrant a present expression of views in regard to it. The majority opinion says of this provision that "It is not difficult to find precedents to support the vesting of administrative bodies with a discretion so limited." On the contrary, the precedents in the Supreme Court of the United States and in the various state jurisdictions would seem to be all but unanimous in indicating, by the principles they enunciate, that such a provision would be held invalid. Here, again, there is no standard prescribed for the exercise of the Secretary's discretion; it becomes necessarily a matter of his personal opinion as to whether the engaging in the business of pawnbroking by an applicant who is admittedly honest and in every way qualified will promote "the convenience and advantage" of the community. No criterion is suggested in regard to the granting or refusal of a license, as, for example, some limitation in the number to be granted in a given neighborhood. In the case of the liquor licensing Act of May 13, 1887, P. L. 108, the court of quarter sessions was directed to refuse a license whenever, in its opinion, it was "not necessary for the accommodation of the public,"—thus establishing the test of adequacy of supply for the needs of a locality. But here the "advantage" of the "community" constitutes the basis of no rule whatever other than that of the general public good, which, of course, is a question for the determination of the legislature and not of an agent authorized by it. I cannot imagine a discretion more unlimited than that thus given to the Secretary of Banking. As was admirably stated by Judge Rhodes in *Kellerman* v. *City of Philadelphia*, — Pa. Superior Ct., 13 A. (2d) 84, 86: "In every case to which we have referred, the actual enforcement of the law was controlled by a standard created by the avowed policy, purpose, or terms of the legislation itself, or adopted by the legislature from

fields of exact science, but in any case in some degree extraneous to and independent of the mind and judgment of the enforcing officer. * * * But any legislative enactment which vests in a person or body of persons free of any standard independent of his or their own mind and judgment the power of supplying, or giving force to, or suspending its terms falls beyond the limits of judicial approval evidenced in the foregoing authorities, and is unconstitutional as a delegation of the power reposed exclusively in the legislature." No provision could be more baneful than one which permits a government official to say that one person may, and another may not, enter upon a legitimate business, without establishing any method by which a court would be able to determine whether such discretionary power has been properly exercised. The act does not even provide for hearing the applicant, or for an appeal to a court, the lack of which was held fatal to the constitutionality of a statute, where a similar discretionary power was sought to be given, in *Southern Railway Co.* v. *Virginia*, 290 U. S. 190. True, it is said in the majority opinion that a right of appeal is implied, but the cases cited in support of that proposition apply only to appeals on constitutional grounds, and in the recent decision of this court in *Commonwealth ex rel. Margiotti* v. *Cunningham*, 337 Pa. 289, 300, one of the grounds upon which a statute was held invalid was that it contained no express provision for appeal to a court from the decision of a public official. In any event, what could such an appeal here amount to? All that the Secretary of Banking need say would be that he was not "satisfied" that allowing the applicant to engage in the pawnbroking business would "promote the convenience and advantage of the community," and under the protection of that vague formula he could arbitrarily grant or reject applications in violation of the proud ideal of our American system—equal justice to all under the law.

Because of the reasons stated, I would declare unconstitutional that clause of section 8 of the act which permits the Secretary of Banking to reject an applicant for a license if he is not satisfied that to grant it would promote the convenience and advantage of the community in which the business of the applicant was to be conducted; also that part

of section 12A of the act which gives to the Secretary the power to fix initially, and thereafter to increase or decrease, fees for storage, insurance, investigation, and other services in certain cases within the limitations therein prescribed. I would also reverse the decree of the court below and remit the record for findings of fact to be made as to the effect of the prescribed fees upon the possibility of those in the business receiving, under such a scale of charges, a reasonable return of interest on their capital investment, in order that it may be determined whether or not the fees fixed by the act are confiscatory and therefore violative of the State and Federal Constitutions.

Mr. Justice Patterson concurs in that part of this dissenting opinion which expresses the view that the State would have no right to suppress the pawnbroking business entirely, and consequently no right to impose a confiscatory schedule of charges, but only the right to regulate it.